REMARKS

Claims 14-29 are currently pending in this case. Claim 14 has been amended for clarity. Applicants have carefully considered the Office Action mailed on February 8, 2005 and in response submit the following remarks.

Claims 14-29 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Pat. App. Pub. No. 2004/0098327, to Seaman. These rejections are respectfully traversed.

Seaman discloses a contingent convertible financial instrument which includes a bond portion and an embedded option portion. The bond portion is redeemable at a maturity date (as with a traditional bond), and the embedded option portion is exercisable, within a specified time period after the value of the shares of stock reaches a target value, for shares of stock in the entity issuing the bond portion in an amount equal to the difference between an early exercise value and a value of the stock on the date that the embedded option portion is exercised. *See, e.g.,* Abstract. That is, once the value of the shares of stock reaches the target value, a specified time period is set for exercising the embedded option portion, and the amount of stock received for exercising the embedded option portion is equal to the difference between the early exercise value and the value of the shares of stock on the date that the embedded option portion is exercised. *See* par. 0021.

Seaman mentions (at par. 0031) having the bond portion "structured to automatically cause the cancellation of the convertibility option at maturity." But that is cancellation of the embedded option portion of the financial instrument provided to the bond holder – not cancellation of a contingent derivative instrument coupled to a debt security, but purchased by an issuer of the security, not a holder of the security, as indicated by amended claim 14.

In any event, Seaman does not teach "a derivative instrument coupled to [a] debt security providing an option to purchase shares at a select price at a future date, wherein said derivative instrument is itself contingent and may be canceled prior to said future date and payment for said derivative instrument is provided on an installment basis, with future payment obligations extinguished upon cancellation," as required by claim 14.

No mention appears to be made in Seaman of the claim 14 term "installment." Nor is the term "callspread" (a limitation of claims 18, 19-21, and 26-29) mentioned. Applicants concede

that the precise terms used in the claims need not be disclosed in Seaman in order for Seaman to anticipate — equivalent terms could be used. However, the Patent Office has not identified any such equivalent terms.

If the Patent Office continues to assert that Seaman does teach a derivative instrument with all of the limitations of claim 14, Applicants respectfully request specific identification of the terms and phrases in Seaman believed to be equivalent to, for example, a contingent derivative instrument paid for on an installment basis, with future payments extinguished upon cancellation. Equivalents of other claim terms (such as "callspread") also should be specifically identified in Seaman, if Seaman continues to be relied upon.

Likewise, Seaman fails to disclose any sort of reversible swap, much less the reversible swap required by claim 22. If the Patent Office believes that Seaman does disclose any sort of reversible swap, specific identification of that swap is respectfully requested. The words "reversible" and "swap" appear to be absent from Seaman.

Such identifications are essential if Applicants are to be provided fair notice of the grounds for rejection. As mentioned in the previous Response, Applicants need (and are entitled to) more than a mere cite to a paragraph, or even worse, a range of paragraphs. Applicants respectfully call attention to 37 C.F.R. § 1.104(c)(2) ("the examiner must cite the best references at his or her command" and "the particular part relied on must be designated as nearly as practicable").

Generally speaking, the Office Action provides insufficient notice to Applicants of the actual grounds for rejection. The Office Action simply repeats various claim limitations and appends the same general citation ("fig.2-all; p.2, 21-22; p. 3, 24-31; and p.4, 44") after each limitation. This is equivalent to an "omnibus rejection" of the claims and is therefore improper. *See* MPEP § 707.07(d).

All of the asserted grounds for rejection in the Office Action having been successfully traversed, all pending claims are believed to be in condition for allowance.

No fee is believed to be due with this Response (other than the extension fee authorized above). However, if any fee is due, please charge that fee to Deposit Account No. 50-0310.

Respectfully submitted,

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